IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 25.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.15541 of 2024
and W.M.P.Nos.16904, 16906, 16909, 16911, 16912 & 16914 of 2024

Devi Dhandapani ... Petitioner

-vs-

1.The Assessment Unit
Income Tax Department
National e-Assessment Centre, Delhi
E-Ramp, Jawaharlal Nehru Stadium,
Delhi – 110 003.

2.The Income Tax Officer
Non Corporate Ward 1(2)
Income Tax Department
No.121, Nungambakkam High Road,
Chennai 600 034.

3.The Principal Commissioner of Income Tax
Chennai 1
Income Tax Department
No.121, Nungambakkam High Road,
Chennai 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the writ petitioner on the file of the 1st respondent to quash the impugned order u/s 147 read with Section 144B of the Income Tax Act, 1961 dated 20.03.2024 in DIN: ITBA/AST/147/2023-24/1063032753(1) for the Assessment Year 2019-20.

For Petitioner : Mr.S.Sridhar

For Respondents : MrB.Ramanakumar, Sr. SC

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ORDER

The petitioner had filed the return of income for assessment year 2019-20 on 05.08.2019. On the ground that there were reasons to believe that income had escaped assessment, the assessment of the petitioner was reopened by issuing notice under Section 148A(b) of the Income Tax Act, 1961. Thereafter, notices were issued under Section 143(2) and Section 142(1). Being dissatisfied with the petitioner's responses, show cause notice dated 10.03.2022 was issued. Such show cause notice was not replied to by the petitioner. The impugned assessment order was issued in these facts and circumstances.

2. Learned counsel for the petitioner referred to the petitioner's reply dated 06.07.2023 to notice dated 05.10.2023. He pointed out that the petitioner had stated that he runs a fuel station. He also pointed out that the petitioner had annexed the balance sheet / statement of affairs, income computation and statement of accounts to such reply. Learned counsel next referred to the petitioner's reply dated 13.12.2023 attaching bank account details, copy of agreement with the Indian Oil Corporation, copy of purchase register for financial year 2018-19 and stock register. In this factual context,

learned counsel submits that the assessing officer was under an obligation to examine these documents before recording conclusions. Instead, he submits that the assessing officer added the entire cash deposits of Rs.5,05,58,753/- on the basis that it is unexplained income. For such reason, he submits that the matter calls for re-consideration.

3. Mr.B.Ramanakumar, learned senior standing counsel, accepts notice for the respondents. In view of the petitioner's turnover being Rs.9,08,97,716/-, he submits that the petitioner was required to submit a tax audit report under Section 44AB. In addition, he submits that a cash book should have maintained. In the absence of these documents, learned senior standing counsel submits that the assessing officer was constrained to treat the entire cash deposits as unexplained income.

4. The impugned order, in relevant part, records the following

conclusion:

> *The assessee has not submitted cash book or bank account statement nor maintained books of accounts in spite of having huge turn over. Hence the cash deposits of Rs.5,05,58,753/- remain unexplained and is added to the total income of the assessee for the AY 2019-20 as unexplained money u /s 69A r.w.section 115BBE of Income Tax Act, 1961. Penalty proceedings under section 271AAC(1) have been initiated through notice issued separately in respect of addition u/s 69A."*

5. The above extract reveals that the assessing officer added the aggregate value of cash deposits to the income of the assessee as unexplained money under Section 69A read with Section 115BBE of the Income Tax Act. Such conclusion was drawn entirely on the basis that the assessee had not submitted the cash book or bank account statement or maintained books of accounts.

6. On examining the documents placed on record by the assessee, it appears *prima facie* that the assessee attached the bank account details, copy of purchase register for financial year 2018-19, stock register, copy of agreement with Indian Oil Corporation, balance sheet / statement of affairs, etc. Therefore, the conclusion that the bank account statement was not attached is contrary to the documents on record. It is also evident that the documents placed on record by the assessee were not taken into consideration while issuing the impugned order.

7. The documents on record, however, also disclose that the assessee failed to respond to the show cause notice. It also appears that no cash book was submitted by the assessee. Therefore, it is just and necessary to put the assessee on terms. Learned counsel for the assessee submits that the assessee agrees to remit a sum of

Rs.10,00,000/- towards the tax demand as a condition for remand.

8. For reasons set out above, impugned assessment order dated 20.03.2024 is set aside on condition that the petitioner remits a sum of Rs.10,00,000/- towards the income tax demand within ***four weeks*** from the date of receipt of a copy of this order. Subject to being satisfied that the remittance was made by the assessee, the assessee is also permitted to submit a reply to the show cause notice within the above mentioned period of ***four weeks***. In order to enable the assessee to upload the reply, the respondents are directed to provide access to the portal. Upon receipt of the assessee's reply and on being satisfied that the above mentioned remittance was made, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing through video conference, and thereafter issue a fresh assessment order within ***six months*** from the date of receipt of the assessee's reply.

9. W.P.No.15541 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.16904, 16906, 16909, 16911, 16912 and 16914 of 2024 are closed.

25.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

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